HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 2161/01 (S/S)

Smt. Parwati Devi

vs

Union of India and others

Approved for reporting

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Not approved for reporting

Date of decision 17-02-2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2161 (SS) OF 2001
(Old No. 46235/1999)

Smt.Parwati Devi,
W/o 17-634L/NK Pratap Singh,
Village Simalkot, P.O. Gangolihat,
District – Pithoragarh. .....Petitioner.

Versus

1. Union of India, through Mahanideshalaya Assam Rifles, Directorate General Assam Rifles (NE Branch), Shilong – 793011.
2. Commander of Chief 17th Assam Rifles, C/o 99 A.P.O.

.....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri K.N. Joshi, learned counsel for the petitioner and Mrs. Anjali Bhargava, learned counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to grant family pension for her missing husband.

Briefly stated, the petitioner's husband joined Indian Armed Force in September, 1961 and was allotted No. 170634 and affiliated with 17th Assam Rifles which has got its Head Quarter at Shilong.

All of a sudden, the record shows that the petitioners husband was granted 75 days leave sanctioned on 22.07.1980 and thereafter he has not joined.

However, the petitioner has informed that her husband is declared absconded. The petitioner applied for the family pension and made a representation on 17.06.1991 but the same has not been paid.

The petitioner sent various representation before respondents office. Ultimately petitioner received document

forwarding copy dated 24th July, 1992 from the office 17th Assam Rifles C/o 99 A.P.O.

In reply of letter dated 24th June, 1992, Zila Sainik Kalyan Evam Punervas, Pithoragarh sent letter for granting family pension and final settlement of Account in respect of No. 170634 L/N.K. Pratap Singh (Desertor).

The petitioner has completed all formalities as required by the respondents and sent all the documents along with a representation on 04.08.1994, 04.02.1995 and 26.07.1995.

After completing all formalities (as required by the respondent granted I.R.L.A. and G.P.F. by his letter dated 30.03.1995 but family pension was not granted.

The petitioner has again sent a representation through her counsel on 13.0.21996 for granting family pension, but no family pension has been released in favour of the petitioner.

A counter affidavit has been filed, where following order was passed on 16th October, 1995 by the Maha Nideshalaya Assam Rifles:--

"Your husband, Ex No. 170634 Late Pratap Singh of 17 Assam Rifles had desertered and as such you are not eligible for any pensionary benefits. However, your husband's credit balance of IRLA and other out standing amount GPF are being paid to you by Commandant 17 Assam Rifles."

Both the parties have submitted relevant rules i.e. Rule (10) of CCS (Pension) Rules regarding family pension as well as G.O. of the Government of India dated 3rd June, 1988. Both Rules as well as G.O. is quoted below:-

"(10) ***Payment of retirement gratuity and family pension to the family, in case an official's whereabouts are not known.-****1. A number of cases are referred to this Department for grant of family pension to the eligible family members of employees who have suddenly*

disappeared and whose whereabouts are not known. At present all such cases are considered on merits in this department. In the normal course unless a period of 7 years has elapsed since the date of disappearance of the employee, he cannot be deemed to be dead and the retirement benefits cannot be paid to the family. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the main is alive or dead and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of providing that he is alive is shifted to the person who affirms it.

2. The matter has been under consideration of the Government for some time as withholding of the benefits due to the family has been causing a great deal of hardship. It has been decided that (i) when an employee disappears leaving his family, the family can be paid in the first instance the amount of salary due, leave encashment due and the amount of GPF having regard to the nomination made by the employee, (ii) after the elapse of a period of one year, other benefits like retirement of death gratuity/family pension may also be granted to the family subject to the fulfillment of conditions prescribed in the succeeding paragraphs."

Copy of Govt. of India, Ministry of Defence, New Dehi letter No. 12 (16)/86/D (Pension/Services) Dated 03.06.1988 addressed to the Chief of the Army Staff, Ari Staff and the Havai Staff.

"2. The President is therefore pleased to decide that when a member of the Indian Armed force is declared missing while in service the family will be paid the following benefit subject to adjustment of outstanding dues in respect of the missing personnel, if any:-

(a) Immediately after the date of declaration of disappearance : The amount of slary due, leave encashment due and DSOP/AFPP Fund amount subject nomination made by the missing personnel.

(b) After the lapse of one year from the date of declaration of disappearance/presumption of Death : Family pension/DCRH etc, as admissible in normal conditions."

Smt. Anjali Bhargava, learned counsel for the Central Government has not disputed the provision for family pension under CCS (Pension) Rules and further G.O. dated 3rd June, 1988 has also not been controverted.

In view of the aforesaid facts and circumstances, the order passed on 16th October, 1995 cannot be allowed to sustain. Although G.P.F. has already been paid but the pensionery benefits to the petitioner have been refused and as such she is entitled for the family pension in accordance with G.O. as well as Rule 10 of the CCS (Pension) Rules.

In view of the above, the order passed on 16th October, 1995 is quashed. The respondents are directed to pass appropriate order releasing the family pension in accordance with rules within a period of one month from the filing of the certified copy of the order. If the family pension is not granted within this period, the respondents are directed to pay the same along with interest at the rate of 6 % per annum.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

17.02.2006
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